IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF PENNSYLVANIA

JAY HOSHAK,)
Plaintiff,) 2:06cv176
v.) Judge David S. Cercone) Magistrate Judge Lisa Pupo Lenihan
SYSCO FOOD SERVICES OF)
PITTSBURGH, LLC,)
Defendants.) Electronically Filed
Detellanis.	,

MEMORANDUM ORDER

Plaintiff's complaint was received by the Clerk of Court on February 10, 2006, and was referred to United States Magistrate Judge Lisa Pupo Lenihan for pretrial proceedings in accordance with the Magistrates Act, 28 U.S.C. § 636(b)(1), and Rules 72.1.3 and 72.1.4 of the Local Rules for Magistrates.

The Magistrate Judge's Report and Recommendation (Document No. 13), filed on September 22, 2006, recommended that Defendant's Motion to Dismiss the Complaint (Document No. 5) should be denied. Service was made on all counsel of record. The parties were informed that in accordance with Magistrates Act, 28 U.S.C. § 636(b)(1)(B) and (C), and Rule 72.1.4(B) of the Local Rules for Magistrates, that they had ten (10) days to file any objections. No objections have been filed to the Report and Recommendation.

After review of the pleadings and the documents in the case, together with the report and recommendation, the following order is entered:

AND NOW, this day of October, 2006;

IT IS HEREBY ORDERED that Defendant's Motion to Dismiss the Complaint (Document No. 5) is **DENIED.**

IT IS FURTHER ORDERED that the Report and Recommendation (Document No.

13) of Magistrate Judge Lenihan, dated September 22, 2006, is adopted as the opinion of the Court.

DAVID STEWART CERCONE
United States District Judge

cc: Hon. Lisa Pupo Lenihan United States Magistrate Judge

> Neal A. Sanders, Esquire Dirk D. Beuth, Esquire Law Office of Neal Sanders 1924 North Main Street Extension Butler, PA 16001

Robert L. Frey, Jr., Esquire Lynch Weis LLC Suite 10, Cranberry Professional Park 101 Smith Drive Cranberry Township, PA 16066

Francis C. Rapp, Jr., Esquire Feldstein Grinberg Stein & McKee 428 Boulevard of the Allies Pittsburgh, PA 15219